STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 96-526

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PUBLIC UTILITIES COMMISSION
Amendment of Chapter 280, Provision of Competitive Telecommunications Services

NOTICE OF RULEMAKING

WELCH, Chairman; NUGENT and HUNT, Commissioners

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I. INTRODUCTION

This rulemaking contains two proposals. The first is a comprehensive revision of Chapter 280. The alternative proposal would retain the existing access charge structure of Chapter 280 and amend it, as an interim measure, to reduce access charges.

The first proposal has two objectives: to revise the access rate structure for interexchange telephone competition and to reduce the overall level of those rates. Access charges are those charges paid by interexchange providers (IXPs) to local exchange carriers (LECs) for the costs incurred by local exchange carriers to complete calls to or from the IXPs' networks. We also propose to simplify the initial approval process and the regulation of interexchange carriers doing business in Maine.

While the first proposal also addresses some local exchange competition issues, primarily the processing of applications for entry into that market, we do not at this time propose to address two other important issues relevant to local exchange competition: the access charges that IXPs should pay to competitive local exchange carriers (CLECs), and the amount that incumbent LECs (ILECs) and CLECs should pay to each other for the local interconnections that are necessary to implement local exchange competition.

These proposed changes should reduce the overall level of access charges paid by interexchange providers, but maintain the parity among all interexchange providers (and, through retail rates, their customers) in what they pay for the use of the network that is largely built by and maintained by the existing local exchange carriers.

Specifically, the proposed rule would:

- split the charge that is presently known as the "common line charge" into its two components:

- an interim declining charge that will provide support for the currently embedded costs of transport and switching facilities for interexchange service (the facilities that run between local switches and toll switches, between toll switches and the toll switches themselves), but only to the extent that those embedded costs exceed the total element long-run incremental costs recovered in other access rate elements from IXPs. This amount, a significant portion of the current common line charge, will be established as of a fixed date and will be reduced to zero over time as the facilities included in the charge are depreciated. Both this charge and the one described below will be assessed on total IXP retail billings.

- a charge that ensures continued support by IXPs and their customers for the "common line" costs, i.e., the facilities that run between a local switch and business and residential consumers, primarily the "loop." Those facilities, although "local" in their location, are used to carry interexchange (toll) traffic as well as local traffic; hence, they are "common" facilities.

- Both of the wholesale charges described above are implicitly included in the toll rates paid by retail toll customers of the ILECs. The charges ensure that other entities providing interexchange service, and their customers, will provide an equivalent level of support for facilities that the ILECs prudently put in service. IXPs and their customers use all of the "common line" facilities and most of the interexchange transport and switching facilities provided by the ILECs.

- Nevertheless, principles of economic efficiency demand that the price of those transport and switching

facilities actually used by the IXCs be set at forward-looking economic cost and, in the longer term, that all providers of interexchange service should recover any costs of their transport and switching facilities that are above that level only from their retail customers.

- Under the present rule, the common line charge is a per-minute charge. Because NYNEX's retail toll rate structure is highly "tapered," with large discounts for high-use customers, it has been necessary to design an access charge structure with similar characteristics. The practical effect is that IXPs' retail toll rate structures must strongly resemble the retail toll structure of the ILECs.

- The proposal would untie any link between the ILECs' and IXPs' retail toll structures. Instead of per-minute charges with volume discounts, IXPs will pay a percentage of their retail billings. IXPs will be free to establish their own price structures and, to a certain extent, their overall price levels.

The alternative proposal would leave present Chapter 280 virtually intact but, on an interim basis, would simply reduce the overall level of access charges paid by IXPs. The Federal Communications Commission (FCC) is presently considering both interstate interexchange access and universal service support issues. FCC plans might have a significant impact on state policies. Accordingly, it may be sensible in the short term to adopt an interim access charge plan. The alternative proposal is discussed in greater detail in Part IV of this Notice.

Parts II and III below describe the first proposal.

II. REORGANIZATION

We propose to reorganize Chapter 280 to provide a more logical order of sections and to make the chapter easier to understand and use. Whole and partial sections have been moved

and rearranged. Some whole sections and partial sections have been eliminated. As before, section 8 is the section that contains the core of the rule, access charge structure, but it is completely reorganized. The following table summarizes the reorganization and other changes to the rule.

Current §/sub-§	Title/Subject Matter	Proposed §/sub-§	Proposed Title/Subject Matter	Proposed Changes
1	Purpose	1	Purpose	revised
2	Definitions	2	Definitions	
3	Applicability	3	Applicability	no substantive changes
4	Approval required	4	Approval for providing competitive services	reorganized; simplified; informational requirements deleted and added
5	Interexchange competition	various	see below	
5.A	General	-----	-----	eliminated as superfluous
5.B.	Continued Authority contingent on payment of access	8(A)		no change
5.B	Blocking of unauthorized service	7	same	no change
5.B	charge for unauthorized service	8(G)	charges for unauthorized services	expansion to reporting
5.C(1)	requirement for ILECs to provide facilities for competitors	6	same	no major substantive change
6	Joint planning for provision of interexchange facilities	-----	-----	eliminated from Chapter 280

Current §/sub-§	Title/Subject Matter	Proposed §/sub-§	Proposed Title/Subject Matter	Proposed Changes
7	Open service/network architecture	5	open network architecture; availability of services and network elements	some reorganization; procedures modified; some substantive changes
8	Interexchange access charges	8	same	completely reorganized; major substantive changes
8.A	Applicability	8(A)	payment required	additional substantive provisions
8.B	Administrator	8(F)&(G)	Access administrator; administration and collection	major substantive changes
8.C	Access charge elements	8(B)	LRIC transport and switching	major substantive changes
8.D	Special access	-----	-----	eliminated
8.E	Private line access	-----	-----	eliminated
8.F	Leakage access	-----	-----	eliminated
8.G	Prohibition of direct end-user access charges	-----	-----	eliminated
8.H	Distribution of access revenues	8(G)(5)	Distribution of 8(D) and 8(E) revenues	substantive changes; more detailed description
8.I	Growth rebate/surcharge	-----	-----	eliminated
9	Charges for OSNA	-----	-----	eliminated

Current §/sub-§	Title/Subject Matter	Proposed §/sub-§	Proposed Title/Subject Matter	Proposed Changes
-----	------	9	Local exchange interconnection charges (Reserved)	
10	Rate schedules filed by competitive providers	10	same	exemption from active regulation stated
-----	------	11	Notice to customers of rate increase	new
11	Commission review of LEC decisions	15	same	minor non-substantive changes
12	Reports	12	Reports and records	exempts IXPs from annual report requirement
-----	-----	13	Waiver of §§ 707, 708; notice	new
13	Discontinuance of service; approval required	14	Applicability of other statutes	adds references to other statutory approval requirements applicable to all telephone utilities
14	Waiver	16	Waiver of provisions of rule	no change

III. DISCUSSION OF PROPOSED CHANGES TO EACH SECTION

§ 1. Purpose

This section is modified to reflect the purposes of the rule as revised.

§ 2. Definitions

This section contains several new and several revised definitions that define various types of interexchange and local telecommunications providers. These are necessary because various substantive provisions in the proposed rule apply in different ways to various classifications of telecommunications providers. We describe here the various categories from most to least inclusive.

"Telecommunications provider" (§2(R)) is the most inclusive category. It includes all of the categories describes elsewhere in the section, i.e., all interexchange and local exchange providers. It also includes entities that are public utilities and those that are not, but which nevertheless must pay access charges pursuant to this rule.

"Interexchange provider" (§2(H)) is the broadest category on the interexchange side. It includes "interexchange carriers," "switchless interexchange resellers," and local exchange carriers that also provide interexchange services. An "interexchange carrier" (IXC) (§2(G)) is facilities-based, i.e., it provides interexchange service using its own facilities. The proposed definition includes entities that are defined by the FCC as "interexchange resellers" because those entities use lines or special access facilities that they control through leasing. A "switchless interexchange reseller" is an entity that has no switching capability of its own and simply resells the services of an IXC. The distinction between facilities-based and switchless IXPs is critical for the reporting of retail and wholesale billings and the assessment of the common line and embedded transport, switching charges contained in section 8, which are based on *retail* billings. Some IXPs may not be public utilities as defined by Maine law; nevertheless, all IXPs that provide retail intrastate service are subject to the access payment requirements of section 8. Finally, an "underlying interexchange provider" (§2(T)) is any IXP (including both IXCs

and switchless interexchange resellers) that sells services to a switchless interexchange reseller.

On the local side, the broadest category of providers is "a local exchange carrier" (LEC) (§2(L)). Within that category are "incumbent local exchange carriers," "competitive local exchange carriers," and "local resellers." "Incumbent local exchange carriers" (ILECs) (§2(E)) are those LECs that were providing service on February 8, 1996, the effective date of the federal Telecommunications Act of 1996. In Maine, the incumbent LECs are New England Telephone and Telegraph Company d/b/a NYNEX and the 23 independent telephone companies (ITCs) that were providing local exchange service on that date. "Competitive local exchange carriers" (CLECs) (§2(C)) are defined as those local exchange carriers that are not ILECs. Within that category are CLECs that provide service using facilities they control, either by owning or leasing them, by purchasing unbundled network elements from an ILEC, or by purchasing local service (bundled) from an ILEC at a wholesale rate that reflects the difference between the ILECs' retail rate and the costs it avoids by providing the service at retail. A CLEC owning or controlling facilities (including by leasing) is capable of providing interexchange access services to IXPs. Because CLECs that only purchase out of a wholesale tariff of an ILEC have no facilities, they are not capable of providing interexchange access. Section 8, the provision governing the payment (by IXCs) and distribution (to LECs) of access charges, distinguishes between ILECs and CLECs for a variety of purposes. See the detailed discussion under section 8 below.

Section 2(D) defines "Forward-Looking Economic Cost," the basis for pricing of the access rates contained in section 8(B) of the rule. Included within the definition are the two major components of forward-looking economic cost: definitions of "Total Element Long Run Incremental Cost" (TELRIC) of a network element or facility, and "Reasonable Allocation of Forward-Looking Common Costs." The proposed definition is intended to be substantively identical to that recently adopted by the Federal Communications Commission for local

interconnection, and is discussed in greater detail in Part III. § 8.B.2 below.

Several other new definitions are included in section 2. These include: common line, interexchange access, loop and operator services. Those definitions are used in various places in the rule, particularly in section 8, and require no further explanation here.

§ 3. Applicability

Proposed section 3(A) expands the applicability of the rule to all competitive telecommunications services. At present, the rule applies only to interexchange services. Proposed subsection (B) restates, without modification, the fact that the rule does not apply to the provision of local service by customer-owned coin-operated telephone (COCOT) providers. The certification and provision of local service by COCOTs is addressed in Chapter 250.

§ 4. Approval Required

Consistent with the change to section 3, we propose that section 4 apply to applications for competitive local exchange service as well as to applications for competitive interexchange service.

As at present, proposed subsection A states the findings that the Commission must make in order to grant a certificate of public convenience and necessity pursuant to 35-A M.R.S.A. §§ 2102 and 2105(A). Proposed subsection B (approval for additional service or service area) simply restates, without substantive modification, the last paragraph of existing subsection A. Proposed subsection C (presently subsection B) states the contents of a prospective telecommunication provider's application to provide service.

We propose to eliminate or simplify some of the findings required by present subsection A, consistent with the

nature of a competitive market. In proposed subsection C (presently subsection B), we would eliminate the need for applicants to provide certain information that is presently required, as unnecessary for the processing of the applications to provide service, for the findings of subsection A, or for the needs of a competitive market. These include: the procedural provisions in paragraph 1 concerning the need to file certain material if it is already on file and to determine the adequacy of an application (the former has not been used and the latter is handled informally); statements concerning facilities that the applicant intends to use (some of these requirements are retained only for applicants intending to use access other than feature group B); and financial reports. The proposed revision modifies certain information requirements and adds requirements that the applicant provide information concerning any investigations that are pending in other jurisdictions; information about whether the applicant intends to offer operator services; and, for switchless interexchange resellers, information about the identity of their underlying carriers, and information designed to ascertain whether the applicant is indeed a switchless interexchange reseller. The latter information is necessary because the proposed section 8 provides an exemption from access charges, to avoid double payment of access charges, for services that are resold at wholesale by one interexchange provider to another. (Much of the information listed above is currently being required pursuant to letters sent by the Administrative Director to all perspective applicants for interexchange service.)

The continued requirement for the description of proposed facilities and services that an IXP will use other than Feature Group D is necessary because Feature Group A and Feature Group B facilities and special access and private line facilities are often used for mixed interstate and intrastate traffic. A LEC providing Feature Group D service is able to measure interstate and intrastate traffic, but is not able to do so for other means of access. For those other means, the reporting and the payment of intrastate usage essentially relies on the honesty of the interexchange provider, tested where circumstances warrant by audits.

§ 5. Open Network Architecture; Availability of Services and Network Elements

Section 5 is nearly identical to present section 7 with two substantive changes. Section 5 describes a process by which other telecommunications providers, customers, or any other person may request a service, access to network facilities or network elements themselves from any telecommunications provider. If the telecommunications provider will not or cannot provide the requested service, access or element, section 5 describes a further process by which the requestor may obtain review of that decision by the Commission staff and, ultimately, the Commission. We propose three substantive changes. First, the present rule allows persons to make requests to LECs; we propose to expand the rule so that persons may request services, access or elements from any telecommunications provider subject to the jurisdiction of the Commission. Second, consistent with the Telecommunications Act of 1996 and the evolution of policy generally, a person may request "network functions or elements, including the unbundling thereof," in addition to the items named in the present rule. Third, the rule is clarified to state that any request made for a service, for access or for a network element that is made to any telephone utility managerial, marketing or business office personnel will be considered a request under this section and will potentially initiate the processes under this section.

§ 6 A. Present Section 6: Joint Planning for Provision of Interexchange Facilities

We propose to delete present Section 6. Its requirements for joint planning among competitors or potential competitors are arguably inconsistent with a competitive market. Moreover, the provision has been used sparingly, despite the fact that LECs have generally complied with the requirements to provide notice of construction plans to other LECs and to larger interexchange carriers. By proposing to eliminate this section in its present form, we are not indicating any lessening of concern about planning for adequate network facilities or service

quality. Recent experience has shown that the modern fiber-optic network is somewhat fragile; accidents caused by motor vehicles may result in major network outages for extended periods of time. Recent events of this type may demonstrate the need for greater network redundancy (parallel and back-up routes) and better network planning.

It is not clear that present section 6 adequately addresses the current or future situations. For example, it addresses only joint planning and not planning by a single utility. Accordingly, while we propose to repeal present section 6, we intend to continue our vigilance of service quality, both through the service quality mechanism contained in the current alternative form of regulation (AFOR) for NYNEX and otherwise.

B. Proposed Section 6: Provision of Facilities by Local Exchange Carriers

This section is derived from present Section 5, subsections C and D. There are two proposed substantive changes. First, under the present rule, an interexchange carrier may request access facilities from an "affected carrier," i.e., an incumbent local exchange carrier (ILEC). Under the proposal, any telecommunications provider (interexchange and local) may request "access and interconnection" facilities from any LEC (both ILECs and CLECs). This section states the general obligation, under the federal Telecommunications Act of 1996, of local carriers to provide sufficient access and interconnection facilities to other telecommunications providers, and states qualifications to that policy that are contained in the present rule.

The second change is in section 6, subsection B(2) (presently subsection C(2) of section 5). The present provision states a policy that if an IXP plans to offer "competitive services from an exchange which has Extended Area Service (EAS) calling to another exchange," the provider will be required to obtain feature group D access from the LEC, but, if feature group D access is not available, the provider must pay a reasonable portion of the LEC's capital costs. The proposed revision would require a competitive telecommunications provider to pay a reasonable portion of the LEC's capital costs for any facilities that the competitive telecommunications provider causes to become overloaded or exhausted.

§ 7. Unauthorized Interexchange Service; Blocking of Unauthorized Traffic

Proposed section 7 is essentially identical to the portion of existing section 7 that requires blocking of unauthorized intrastate traffic. The remainder of existing section 7, which addresses the rate that unauthorized providers of intrastate interexchange service must pay when their traffic is not or can not be blocked, has been transferred to section 8(G)(1).

§ 8 Interexchange Access Charges

A. Introduction

In this introduction, we describe the nature of the modern telecommunications network in Maine and the nature of the costs of that network. We hope this explanation will aid in the understanding of the philosophy and economic rationale of the proposed rule.

1. The Network and How Interexchange Telephone Service Is Delivered

At its simplest level, the telephone network that is used for interexchange service in Maine can best be described by tracing an interexchange (toll) call. Assume that a telephone subscriber in Rumford places a call to telephone subscriber in Damariscotta. The subscriber in Rumford is a customer of NYNEX (New England Telephone and Telegraph Company d/b/a NYNEX) for local service, i.e., for calling to Rumford and areas within Rumford's extended area service (EAS). At present, Rumford customers, like all other customers in Maine, may obtain local service from only one local telephone company (local exchange carrier (LEC)). The customer does have a choice among long-distance (interexchange) companies, but for the initial purpose of the example, we will assume that the customer uses NYNEX. Indeed, if the customer simply dials the 7 digit number of the called party, the customer will automatically receive the interexchange toll service offered by the customer's local company, in this case NYNEX. The Rumford customer's call is first routed over a NYNEX "loop" to the NYNEX local switch (also called a central office or wire center) for the Rumford exchange. Loops are those facilities (utility poles and wire) that run from the local switch to various customer locations. While loop facilities can and are configured to allow sharing of some facilities by customers, for the sake of simplicity, it can be assumed that each customer is assigned a loop dedicated solely to that customer's use.

If the customer were calling another number in Rumford, the call would be switched at the local switch and sent out over another loop to the other Rumford customer. However, in the case of the call to Damariscotta, the call will be sent by the Rumford switch over a NYNEX trunk to a NYNEX toll switch, mostly likely in Lewiston.

Trunking facilities (also called transport facilities) are used in common for all calls that are not routed through "private lines." They, along with switches, are the most "public" part of the "public switched network." Unlike loops, they are not dedicated to a particular customer. Thus, while the local switch in Rumford has about 5,700 loops coming into it from the Rumford exchange, telephone company engineers know that not all of those customers will be placing a call that goes out of the exchange at once. Therefore, it will be necessary to provide many fewer than 5,700 trunking circuits from Rumford to various other exchanges, including the toll switch in Lewiston. In the case of the call we are describing from Rumford to Damariscotta, that call will be routed from the Rumford switch over any trunking circuit that is not in use.

From the toll switch in Lewiston, the call is routed over other trunking facilities to the local switch in Damariscotta. The call might be routed in a variety of ways from Lewiston to Damariscotta, e.g., directly (without further switching) or through the Portland or Augusta toll switches. The actual routing may depend on whether trunking facilities are reaching their level of capacity. Damariscotta is served by Tidewater Telephone Company (Tidewater), an independent telephone company (ITC). At the border between the Wiscasset exchange of NYNEX and the Damariscotta exchange of Tidewater, the call is transferred between the two companies' trunking facilities.

NYNEX and Tidewater provide the telephone service described above jointly (i.e., in combination with each other rather than competitively). At least at present, neither company provides originating or terminating exchange toll services in the other's service territory. Unless the call is a

collect call, the customer placing the call in Rumford will pay NYNEX for the call; the proceeds are split among the companies by a process called settlements. If the call were placed by the customer in Damariscotta to the customer in Rumford, the customer in Damariscotta would pay Tidewater Telephone Company for the call, but the proceeds would still be distributed through the settlements process.

The caller also might place the call to another area in which NYNEX was the local exchange carrier or to another area in which one of the other 22 independent telephone companies is the exclusive local exchange carrier.

Despite the fact that local interexchange carrier franchises are at present exclusive, the customer in Rumford does have competitive choices for the interexchange call to Damariscotta. The customer could have placed the call over any of several interexchange providers (IXPs) that have been granted the authority to provide interexchange service in Maine. For example, the customer might have chosen to use MCI. Unlike interstate calling, there is at present no "presubscription" for interexchange service, although NYNEX has indicated that it will implement intrastate presubscription by May 1997.

To place an interexchange (toll) call at present that uses a carrier other than the NYNEX-ITC combination, a caller must dial a carrier identification code (CIC) (10XXX or a 700 number). MCI's CIC is 10222. If the customer in Rumford dialed 10222 + the number in Damariscotta, the call would be "carried" and billed to the customer by MCI. However, the call would follow the same routing over the customer's loop to the NYNEX switch in Rumford and over NYNEX trunks to the Lewiston toll switch. It would then be carried over NYNEX trunks to the Portland toll switch. At Portland, the call would be transferred to MCI's "point of presence" (POP). MCI would then carry the call over its own facilities (which might be owned by MCI or leased from another carrier such as AT&T) to MCI's switch in Boston or elsewhere. MCI's switch would receive the essential billing information (the originating number and the terminating

number) and send the call over a trunk to MCI's POP in Portland. The call would then be transferred back to NYNEX in Portland and sent over NYNEX and Tidewater trunks to Damariscotta.

For the example given, the call placed with MCI would be carried over NYNEX facilities for the same or a longer distance than if the call were placed directly with NYNEX and would be carried over the same amount of Tidewater Telephone Company facilities. At a minimum, calls (e.g., those that would be routed through the Portland toll switch in any event) are likely to use at least the same amount of NYNEX and ITC facilities as a call placed directly with NYNEX or an ITC. In the example given, the only facilities actually provided by MCI are those that were necessary for MCI to collect the billing information. MCI has evidently found it to be more efficient to maintain a regional switch in Boston and to transport its Maine intrastate traffic to Boston and back than to maintain a switch in Portland.

The example given is typical of calls carried by interexchange providers in Maine. Of all of the interexchange carriers, only AT&T has more than one POP. AT&T maintains POPs in Portland, Lewiston, Augusta and Bangor and transport facilities (trunks) in between. Thus, AT&T may actually use facilities it owns or leases to carry some of a call that is placed, for example, between Biddeford and Presque Isle.

The customer in Rumford might also chose to obtain intrastate long-distance service from a "switchless reseller." About 100 switchless resellers have been certified to provide service in Maine. Let us assume that the customer has signed up for service with XYZ Company (a fictitious name). As with any interexchange service provided by a non-LEC, the customer may obtain non-LEC service only by dialing a code. For this example, we will assume that the customer has been instructed by XYZ to use the code 10222, i.e., MCI's code. In fact, the call will be carried by MCI (actually by NYNEX, MCI, NYNEX and Tidewater); the routing will be identical to the call placed with MCI. However, the customer will be billed by XYZ at

rates that are likely to be slightly different than MCI's. XYZ does not carry or process the call in any way. XYZ simply purchases service from MCI's intrastate retail schedule of rates. MCI's retail rate schedule contains a quantity discount. MCI provides a single bill to XYZ (containing the billing information XYZ needs to bill its customers), and XYZ then bills its customers directly or has a billing arrangement with a local exchange carrier to bill its customers.

As can be seen by the examples above, LEC facilities continue to be used and LECs continue to incur costs whether a customer has chosen a LEC or a competitor to "carry" the call. Even if competing IXCs should decide to deploy their own transport facilities in a much greater quantity than they have over the past eight years, LECs (whether incumbent LECs or competitive LECs) will doubtless carry both the beginnings and ends of most calls, i.e., those portions carried over loops.

2. The Nature of Interexchange Costs

The cost of providing telephone service has been declining for at least the past decade. The reason for this declining cost is primarily technological, particularly the use of digital switching and fiber optic transmission. The cost of building an additional increment of capacity today is generally less expensive than the cost of adding that increment in the past. Moreover, the cost of adding that increment is even likely to be less than the current cost of maintaining and supporting the older equipment that is on a telephone company's books, even though that property has been partially depreciated. Accordingly, the average cost of providing a given unit of telephone service exceeds the forward-looking (marginal, or incremental) cost of providing that same unit or increment. It is this difference between forward-looking and embedded costs that gives rise to difficult issues of pricing policy.

3. Present Retail and Access Recovery of Costs

It has been our policy since the implementation of Chapter 280 in 1989 that the switching and transport facilities that a LEC makes available to its competitors should be priced at the LEC's incremental cost. As explained more fully below, the goal of that policy is to promote economically efficient pricing decisions by all IXPs. We propose in this rulemaking to continue the policy.

Nevertheless, retail rates generally are set to recover embedded, not incremental, costs. Even under price-cap regulation, e.g., the NYNEX alternative form of regulation (AFOR), the starting point for rates under the AFOR was NYNEX's embedded revenue requirement.

The difficult issue for interexchange access charge policy is determining to what extent and how to recover the difference between (1) the incremental cost that carriers using transport and switching facilities of the LECs pay in incremental-cost based rates (or avoid by providing their own facilities) and (2) the average cost (embedded cost) of providing those facilities. As noted above, that differential is automatically recovered in retail interexchange (toll) rates paid by the retail customers of LECs because those rates are based on embedded cost. Present Chapter 280 requires the common line charge, after deduction of the costs recovered through incremental rates, to mirror the ILECs' retail toll rates. The present common line charge therefore does not recover the difference between the LECs' incremental and embedded costs from wholesale customers (IXPs). As discussed in detail below, we propose to continue the policy, in substantially modified form, that IXPs should continue to pay embedded costs . However, for transport, switching and operator service costs, rates should be reduced over time so that, once the differential between embedded and incremental cost is reduced to zero, the differential rate will disappear and wholesale customers will pay only the incremental cost rates.

For this first proposal (as for the alternatives described in Part IV below), we request comment

about an effect it may have on the alternative form of regulation (AFOR) we have adopted for NYNEX, effects under the existing AFOR rules, its relation to AFOR pricing rules for retail interexchange rates, and whether any new pricing rules may be necessary.

B. Proposed Section 8: Explanation of Individual Subsections

1. Subsection A: Payment and Reporting Required

Proposed paragraph 1 of this subsection A is based on existing subsection A of present Section 8, but states the requirement of who must pay access charges in more general terms, i.e., by all interexchange providers (IXPs), including local exchange carriers that provide interexchange service, switchless interexchange providers, and including any IXP that is not a public utility. The specifics of what entities are interexchange providers is left to the various definitions of Section 2. The policy that access charges must be paid by interexchange providers that are not public utilities is contained in the present rule. The present rule applies to "all" competitive providers and thus literally applies to switchless interexchange resellers as well as to facilities-based interexchange carriers, thus requiring double payment of access for the same calls. The Commission has resolved this problem by granting exemptions from payment of access charges by switchless interexchange resellers, provided that a switchless reseller's underlying carrier is certified and pays access. In the proposed rule, we continue to adhere to the principle, established through the granting of the waivers, that double access charges should not be paid. However, for the reasons explained below in section B(7)(c), we believe that the present system has not worked. Therefore, we propose in this rule to require all interexchange providers, including switchless interexchange resellers, to pay access, but to provide the exemption designed to prevent double payment to the underlying interexchange carriers by exempting wholesale sales to switchless interexchange resellers.

Proposed paragraph 2 of subsection A sets forth the consequences for failing to pay access or failing to comply with reporting obligations. The consequences for failure to pay access are derived from present sections 5(B).

Proposed paragraph 3 provides that payment of interstate access does not excuse the payment of intrastate access. That rule is presently in section 8(A)(1).

Proposed paragraph 4 is necessary for the administration of the wholesale billings exemption described above.

2. Subsection B: Incremental Rates for Switching, Transport and Operator Services and Other Traffic-Sensitive Functions

The rates for transport, switching, operator services and other traffic-sensitive functions should continue to be set at forward-looking economic cost. As described in the definitional section 2(E), the major component of forward-looking economic cost is "total element long-run incremental cost" (TELRIC). The proposed definition is intended to be substantively identical to that adopted by the FCC (for local interconnection) on August 8, 1996, in its Interconnection Order. *In the Matter of Federal Communications Commission, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order (August 8, 1996), ¶¶ 674-715; 47 C.F.R. §§ 51.505 and 51.511 ("Interconnection Order"). We have reviewed the FCC definition and find it reasonable.[1]

[1]We do find a semantic problem with the FCC's definition of TELRIC that we believe makes the definition confusing and difficult to understand. The FCC has defined TELRIC "of an element" as "the total quantity of the facilities and functions that are directly attributable to, or reasonably identifiable as incremental to, such element . . . ." We propose to replace that

Similar to the policy in the present rule (present section 8(C)(2) and (3)), which states that rates for transport and switching be set at long-run marginal cost. Although incremental cost and marginal cost differ, they are both measures of forward-looking rather than historical costs.[2]

For the rates calculated by NET that are now in effect, NET used total capacity of the given increment rather

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language with "the total quantity of all costs inputs to that element that are either directly attributable to or reasonably associated with its cost . . . ."

We intend that the substantive meaning of these two phrases be identical.

We have clarified the FCC definition in two other respects. First, the requirement to use "forward-looking cost of capital" states that the forward looking cost of capital consists of projections of the cost of equity and the cost of debt. (§2(D)(1)(a)(ii)). Second, the FCC definition of "forward-looking economic cost per unit" requires a denominator equal to the "likely" demand during "a reasonable measuring period." We propose to add the phrase "which generally will be a period that includes peak demand." (§2(D)(3)). In most cases, there are no incremental costs during off-peak periods.

[2]Both incremental and marginal cost measure the cost of additions to the telephone network rather than the embedded or average cost of the network. Marginal cost measures the cost of meeting the next unit of output or demand, e.g., the cost of adding an access line. Incremental cost measures the cost of meeting a stated increment of output demand, either what is necessary to satisfy a particular demand or, in some instances, the amount that is practical to add. For example, cable may be available only in certain capacity sizes and the smallest capacity size may be far larger than one unit of capacity that may be needed by a particular customer, e.g., one circuit.

than a realistic level of demand, thus producing what are probably unrealistically low long-run incremental costs. The FCC and proposed definitions both require that the incremental cost be divided by a reasonable projection of expected demand. The proposed definition is generally based on and consistent with the ruling made by the Commission in *Public Utilities Commission, Investigation Into New England Telephone Company's Cost of Service and Rate Design*, Docket No. 92-130, Order at 21-22 (April 13, 1994).

The purpose of using forward-looking pricing is to provide an appropriate price signal to purchasers. If a potential purchaser, in this case an interexchange carrier, has reason to believe that its own going-forward costs are less than those of the LECs, it has an economically sound reason to build its own facilities. If the IXC has reason to believe that its going-forward costs are higher than those of the LECs, it may be more rational for it (economically) to purchase transport and switching services from the LECs. Accurate going-forward pricing produces neutral incentives. It does not artificially encourage inefficient investments by IXCs or artificially discourage efficient investments. Inaccurate prices that are too low (as may presently be the case) will discourage efficient investment that IXCs should make. Inaccurate pricing that is too high will encourage inefficient investment by IXCs.[3]

[3]In discussing the proper level of incremental pricing, it is important to understand that the level of incremental pricing does not necessarily affect the amount of total recovery by a LEC or the total amount paid by an IXP. As discussed below, the interim charge for embedded interexchange transport, switching and operator services costs (section 8(C)) is designed to recover the difference between embedded cost and incremental cost. Thus, if the incremental-cost-based rate increases, the rate based on the difference between embedded and incremental cost will decrease, and vice versa.

We do not propose in this rulemaking to implement charges for local competition. As discussed above, the FCC has recently ruled that states must use forward-looking (total element long-run incremental costs) for local intrastate interconnection charges. Whether or not that ruling is binding on the states (it has been appealed), we presently intend that charges for network elements and for transport and switching for local competition will be based on incremental cost and will use the same methodology as that for interexchange transport and switching incremental cost, and that both charges shall be as consistent as possible with the FCC definition. See discussion below under § 9.

Paragraph 4 of subsection B states a general rule that the long-run incremental cost rates for transport and switching shall be averaged across all exchanges or routes of an ILEC, but that an ILEC may file deaveraged rates for any exchange or transport route that has incremental costs that are more than 20% below average. The purpose of this provision is to assure that a proper price signal is sent for those exchanges in order to prevent inefficient investment by IXPs because the price is too high.

Paragraph 5 of subsection B requires special rates for IXPs that use methods of access other than Feature Group D. Under the access methods listed in the rule, the ILEC is not able to measure the intrastate and interstate percentages of an IXP's traffic. The ILEC thereby loses one method of checking the veracity of IXP reports of intrastate revenue. The price differential between Feature Group D and other forms of access is now either nonexistent or substantially less than in the past, but the quality of those other forms remains lower than Feature Group D. We are not aware of any reason for preferring other forms of access to Feature Group D other than using it as a means to avoid Maine intrastate access charges. Accordingly, the TELRIC prices otherwise required by this subsection are increased by 25% in order to create an incentive for IXPs to use Feature Group D. We seek comment on whether the proposed surcharge is appropriate and, if so, is it adequate.

Paragraph 6 of subsection B in effect allows an ILEC with less than 30,000 access lines (presently all of the existing independent telephone companies (ITCs)) to concur in the TELRIC switching and transport rates of a company that has more than 100,000 access lines (presently, NYNEX). However, if any ITCs should merge such that the resulting entity has more than 30,000 access lines, it will be required to file its own TELRIC access schedules.

3. Subsection C: Transitional Recovery of Embedded Interexchange Transport Switching and Operator Service Costs

As explained in paragraph 1 of the proposed subsection C, we propose in this subsection to provide for recovery of the incumbent LECs' embedded revenue requirement for transport, switching and operator services to the extent that their embedded costs exceed the long-run marginal costs included in the forward-looking rates for transport, switching and operator services required by proposed section 8(B) of the rule. The equivalent of this charge is currently included as part of the common line charge required by present § 8(C)(1) of the rule. The name of the present charge is over-inclusive. As described in proposed section 2(A) (the definition of "common line"), the term "common line" refers only to loop and related facilities and not to transport and switching facilities. The proposed charge differs from the present common line charge in four major respects.

First, the charge is based on each IXP's market share as measured by the IXP's retail billings. At present, the common line charge consists of per-minute charges on originating and terminating minutes of use by each IXC.

Second, we propose that the charge will decline over several years to a level of zero. The total embedded revenue requirement for transport, switching and operator services for each ILEC will be established after adoption of the rule. No additional investment or other costs

will be added to the original calculated amount, and the original calculated amount for each ILEC will decline at the same rate as the ILECs' depreciation rate for the investment that is included in the amount. By contrast, under the present rule, the present common line charge is based directly on the ILECs' retail toll rates and, indirectly, on the ILECs' current level of embedded costs. Those toll rate are, of course, designed to recover embedded revenue requirement and they change over time as the revenue requirement changes.

Third, the charge applies to all interexchange providers, including ILECs that provide interexchange service and switchless interexchange providers.

Finally, this charge will be a separate charge. At present, it is combined in the current common line charge with the recovery of embedded loop costs that are attributable to interexchange use. The separation of the current common line charge into two parts is necessary in order to assure that this will be a declining charge. (Notwithstanding the separation, the total amount subject to recovery in each year will be levied on a combined basis as described in subsection G(3) of proposed section 8.)

By capping the total amount that is subject to recovery pursuant to this charge, we recognize that ultimately (after recovery of the present excess) each ILEC (like other IXPs) should be "on its own" for the recovery of any future excess of embedded transport, switching costs over long run incremental costs from its retail ratepayers. Nevertheless, as discussed in the introduction to section 8 (Part 8.A.1 above), IXPs, to a very great extent, simply use the transport and switching facilities of the ILECs to carry the traffic of their own customers. When IXPs use only ILEC facilities, rather than constructing their own, they, as wholesale customers, and their retail customers, impose the same costs on the network as do the retail customers of the ILECs. In these circumstances, and when they use ILEC operator services, sound policy suggests that IXCs should pay the ILECs' embedded costs to the same extent as the

ILECs' retail customers pay those costs. Its investment is, of course, all of the investment that is prudently put into place to serve the public and is measured by the amount on its books, i.e., its embedded investment.[4]

By requiring an ILEC to recover future excesses of embedded costs over incremental costs solely from its retail ratepayers, we are subjecting the ILECs, along with all other IXPs, to the forces of the competitive market. Removing

[4]IXPs may provide their own operator services more frequently than they do their own transport and switching facilities. Nevertheless, embedded operator service costs do exceed forward-looking costs. To the extent that an IXP provides its own operator services, an ILEC may well have underutilized fixed investment and higher unit costs. Operator service fixed costs are very substantial. The existence of those higher unit constitutes an alternative justification for recovery of the excess of embedded over incremental costs from IXPs.

The recovery of the differential between embedded cost and forward-looking costs does not resolve the entire problem with operator service costs. As required by §2(D), forward-looking rates must be based on the forward-looking cost *per unit*, using a reasonable level of expected demand. A demand that is deflated because carriers use their own operator services will cause forward-looking unit rates to increase and the differential between embedded and forward-looking costs to decrease, thus reducing the recovery of fixed operator service costs under this subsection. The present rule automatically recovers an amount that approximates the LEC's fixed cost (and may even exceed it) because the common line operator surcharge (§8(C)(i)(c)) is set at the LEC's "operator surcharge minus the avoided cost of not having to employ operators to handle the call." We solicit comments concerning the issue raised by this discussion, including whether the ILECs' fixed costs of providing operator services (as the carrier of last resort) should be treated in the same manner as common line costs under subsection B above.

any guarantee of support for excessive investment through charges to IXCs removes a major incentive to make such excessive investments. Although the initial calculation of the amount that is subject to recovery is similar to traditional rate-based, rate-of-return regulation, the fact that only future depreciation, and not future additions, is factored in, creates an incentive system that is similar to the incentives that we have established for NYNEX under the alternative form of regulation ordered in Docket No. 94-123.

We believe that the proposed charge satisfies any constitutional requirement. ILECs will be able to recover their prudent investments in transport, switching and operator services that have been made by a certain future date. Thereafter, they are on notice that any future investment that exceeds the incremental cost-based rates required by this rule will be subject to recovery from retail ratepayers, but will also be subject to competitive forces that might place that recovery at risk. Subjecting future recovery on any guaranteed basis to the cap of incremental cost is similar to a price cap regime under an alternative form of regulation.

One of the purposes of the long-run incremental cost rates for transport and switching is to allow IXCs to provide their own transport and switching facilities and operator services if they are able to do so more efficiently than the ILECs.[5] However, under both the current and proposed rules,

[5]The economic efficiency goal of the total element long-run incremental cost rates for transport and switching is not compromised by the proposed interim embedded charge because each charge is separate. An IXC pays the LRIC transport or switching charge if the IXC actually purchases and uses a particular transport or switching service. The charge is avoided if the IXC provides its own transport or switching function at or between the locations in question. By contrast, the proposed subsection C charge (the excess of embedded cost minus incremental cost) applies without regard to whether the IXC uses any particular (or

IXCs pay for the excess of embedded transport and switching costs over LRIC transport and switching costs no matter what the extent of their actual use of those facilities. The current common line charge is levied on all originating and terminating minutes of use, regardless of the routing between origination and termination; the proposed charge is levied as a percentage of retail billings. If IXCs actually construct their own transport or switching facilities or offer their own operator services, it is increasingly difficult to justify requiring them to pay for the difference between the embedded and incremental costs of ILEC facilities that they do not even use.

We also propose that both charges be based on market share, as measured by total retail billings, rather than on minutes of use. The present charge is a per-minute charge. It varies in amount (from about 10¢ per minute averaged for all times of day to about 26¢ per minute averaged for all times of day) depending on the calling volume of the ultimate retail customer. (The amounts stated are for the entire common line charge, including the charges for embedded transport and switching and loop ("common line") facilities.) Thus, the access charge structure is intentionally designed to mirror the ILECs' overall retail rate structure, i.e., average rates at various calling volumes, without taking into account of particular calling plans.[6] Under that structure, if an IXC does not wish to lose money on particular minutes sold to particular customers, it must charge at least the level of access for the particular

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even any at all) switching or transport facilities.

[6]Originally, IXCs paid an average per-minute price, without regard to the calling volumes of their own customers. However, because NYNEX's (and the ITCs') rate structure had become highly tapered and their retail rates for high volume customers were much lower than the average access rate, the IXCs effectively were not able to compete for high volume customers. In the 1991 revision to the rule, we modified the rule to require common line charge discounts that paralleled the discounts that were contained in NYNEX's retail rate structure.

minute for that customer. Obviously, IXCs are free to lose money on some minutes and gain more on others, but as a rule, they have generally structured their rates to mirror the access charges they pay, and, indirectly, on the NYNEX-ITC overall retail rate structure.

In two important respects, however, the present access charge structure does not mimic NYNEX's retail structure. One is distance sensitivity. We did not require the access structure to include distance sensitivity because NYNEX's carrier access billing system (CABS) cannot provide distance sensitive billing and, according to NYNEX, could not do so without considerable expense. Non-LEC IXPs have apparently felt tied to the access charges that do not include distance sensitivity. The vast majority have no distance sensitivity to their toll rates; they charge more than NYNEX for short-haul toll calls and less than NYNEX for very long-haul calls, exactly mirroring the access charge structure. The access rate structure also does not accurately mimic all of NYNEX's various residential and business optional calling plans. Thus, an IXP presently would not be able to design a plan such as Pine Tree State Calling, for example, without paying more in access on some calls than it would collect in rates.

We believe that one of the significant advantages to the proposal is that the amount of the two embedded charges that IXPs must pay is no longer tied to an access rate schedule that is designed to mirror the ILECs' overall retail rate schedule.

Under the proposal, IXPs will pay a stated portion of their retail billings. (The basis for calculating that percentage is explained in the discussion of subsection G below.) There will be no link to either the access charge structure or to the ILECs' retail rate structure. The proposal leaves an IXP free to develop any type of rate structure it desires. In addition, the proposed method allows an IXP to reduce the amount it pays by reducing its billings. It therefore creates an incentive for any carrier to reduce its retail

billings by reducing its rates. (Of course, a rate reduction may lead to some increase in revenues through stimulation of demand.) We caution, however, that if all IXPs reduce their rates (and their billings) simultaneously the percentage of their retail billings that they must pay, in a subsequent quarter, will increase, because the percentage is based on the amount subject to recovery divided by aggregate retail billings of all IXPs.

Paragraph 2 of subsection C describes the method for calculating initial revenue requirement for the charge and the annual adjustments. The ILEC would use its composite depreciation rate for the investment that is included in the revenue requirement, but would apply that rate to all costs.

Paragraph 3 describes the method for calculating cost of capital for use in the calculation of the revenue requirement amount for embedded transport and switching.

Paragraph 4 provides that the charge will terminate when the embedded cost subject to recovery no longer exceeds the amount that is recovered through the TELRIC rates for switching, transport and operator services required by subsection B.

4. Subsection D: Common Line Cost Recovery Charge

The charge proposed by subsection D is equivalent to that portion of the current over-inclusive "common line" charge that in fact is actually associated with the common line, i.e., the loop. Because the proposed charge seeks to recover embedded costs associated with the "common line" we propose that it continue to be so named. The "loop" is essentially those facilities that provide service between the central offices (switches) interexchange and individual customers. Common lines (or loops) carry both interexchange and local traffic. A definition of the "common line" is contained in section 2(A).

Loop costs are non-traffic-sensitive and the definition of common line also includes non-traffic sensitive

portions of the local switch. A cost is said to be "non-traffic-sensitive" when the cost does not vary with the amount of usage, i.e., it is "fixed." Their costs are non-traffic sensitive because the poles that hold cables and the cables that contain loops must be in place whether there is a large volume of traffic or a small volume of traffic.

Revenues from local basic exchange, from interexchange toll and from various other services all provide support for (or "contribution" to) the embedded costs of the common line. Because the current common line charge is based on the NYNEX-ITC retail toll rate structure, IXCs (and, presumably, their retail customers) are required to provide essentially the same level of toll contribution toward common line plant as do retail toll customers of NYNEX and the ITCs. We propose to continue that policy in the proposed charge.

We also propose that the subsection D charge be based on a percentage of retail billings by each IXP rather than a per-minute charge, in the same manner as the subsection C charge (for the difference between embedded and incremental costs of transport, switching and operator services). That approach frees IXPs from being tied to the ILECs' retail rate structure. Unlike the subsection C charge, however, we do not intend that this charge will be capped at the existing level at a stated point in time, or that it will decline as plant is depreciated. Rather, the charge will be based on reasonably current common line revenue requirement as plant is added and depreciated. The constitutional requirement that a utility be provided with a reasonable opportunity to earn a fair return on its investment applies equally to prudent investments in embedded loop plant as it does to prudent investments in embedded transport and switching facilities.

As discussed above, IXCs can and do provide their own transport and switching facilities, and the changes we propose to the method of calculating long run incremental costs for those facilities may result in greater investment by IXCs in their own facilities. By contrast, the interexchange traffic of

all IXPs almost always use the loops owned by ILECs (or, in the future, by competitive local exchange carriers); their traffic, with few exceptions, either originates and/or terminates on those loops.

Some carriers or customers bypass local loops to connect directly (e.g., through special access or private lines) to interexchange facilities. It is questionable whether such bypass is efficient, and it is possible that it is encouraged by both federal and state policies, including the current common line charge structure under our current rule.[7]

The proposed charge attempts to recover the level of contribution to the common line that is obtained from retail interexchange revenues. It therefore will be necessary to determine the relative contributions from local basic exchange revenues and from interexchange revenues. Paragraphs 2 and 3 of subsection D describe the method for that calculation. The ILEC must first determine its common line revenue requirement (definitionally costs that are *non traffic-sensitive*). It must then deduct the portion of *local* exchange that provide contribution to those *non traffic-sensitive* costs. To determine that portion, the ILEC must first determine the portion of those revenues that provides support for *traffic-sensitive* costs, and then deduct that amount. To determine that *traffic-sensitive* amount, paragraph 3 allows a ILEC to conduct an embedded cost study of traffic-sensitive costs or to use a proxy method based on FCC rates for traffic-sensitive functions (transport and switching) that have been derived from part 69 of the FCC's rules (47 C.F.R.).

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[7]Under the current rule, all interexchange competitive providers pay approximately 9¢ per minute for terminating access. Carriers pay about 16¢ (averaged across all times of day) for originating traffic with steep discounts for higher volume levels. In the case of a large customer that bypasses at the originating end, the carrier may pay only terminating charges and avoid originating charges entirely.

The Commission seeks comment on whether some portion of the revenues from services other than those that can be classified as interexchange or local basic exchange should also be deducted as described above, with the effect of reducing the amount of recovery included in this subsection D charge. If so, commenters should state to what extent and how such an adjustment should be made.

We note that the FCC's Interconnection Order (CC Docket No. 96-96, August 8, 1996) states that after June 30, 1997, a CLEC that pays for a link (loop) under an interconnection agreement or order (approved or ordered by a state commission) cannot also be charged intrastate (or interstate) access charges. The FCC's interconnection order requires the link (loop) to be priced on an unseparated basis. Thus, in theory, a purchaser is already paying for interstate and intrastate interexchange costs, along with intrastate local costs, albeit only on an incremental basis. The imposition of interexchange access charges might constitute double recovery. See Interconnection Order at ¶¶ 721-722; 47 C.F.R. § 51.515 (Appendix B to the Interconnection Order).

Under our proposal, however, incumbent LECs that also provide interexchange services must pay the subsection 8(D) common line charge to the access administrator. Those ILECs will in turn receive compensation for that portion of their loop costs allocated to interexchange. Similarly, we expect that future amendments to the rule will require CLECs who are also IXCs (e.g., AT&T) both to *pay* a common line charge to the access administrator and *receive* common line compensation from the access administrator if they own their own links or purchase unbundled links from an ILEC. This plan will avoid the kind of double recovery described by the FCC in the Interconnection Order and will do so in a more precise and fairer manner. We consider it to be a viable alternative to the exemption of CLECs who are IXCs from common line charge payment responsibility.

Paragraph 4 of subsection D requires that an ILECs' cost of capital for calculating its common line revenue

requirement be calculated in the same way as it is for the subsection C charge.

Paragraph 5 describes annual revisions to the charge for embedded common line costs. NYNEX is currently subject to an alternative form of regulation (AFOR) that was implemented in Docket No. 94-123. One of the purposes of an AFOR is to create a system that avoids the disadvantages of traditional rate-base, rate-of-return regulation and creates incentives for telephone utilities to invest and operate efficiently. Requiring an ILEC that is under an AFOR to calculate an embedded revenue requirement for its common line investment appears to be an antithetical to that purpose. However, for the starting point of the AFOR, NYNEX did calculate its revenue requirement. For this charge, we are requiring NYNEX to update that revenue requirement to the effective date of the beginning of the charge and thereafter to index the charge in the same way as all other rates under the AFOR. The charge for other ILECs will be subject to changes in the same manner as other rates under rate-of-return regulation, until such time as an ILEC is subject to an alternative form of regulation.

5. Subsection E: Limited Exemption From Cost Calculation by ILECs Using Average-Schedule Costs

Proposed subsection E contains an exemption for average-schedule companies, limited in time, from having to perform the cost calculations that would otherwise be required by subsections C(2) and D(2). Those subsections require incumbent local exchange carriers (ILECs) to calculate their embedded transport and switching and embedded loop revenue requirements for the purpose of recovering those amounts pursuant to the subsections C and D charges. The exemption will allow average-schedule companies to use their average costs in lieu of the calculations. The exemption lasts for five years, unless there is a prior rate case initiated either by the company or the Commission.

6. Subsection F: Access Administrator; Rate Schedules

As discussed above, we propose to implement charges for the recovery of embedded traffic and switching (on an interim, declining basis) and for common line (loop) investment by ILECs. All interexchange providers (IXPs), including all local exchange carriers (LECs) that provide interexchange service, must pay those charges. As described below in our discussion of subsection G, those revenues must be distributed among the ILECs in proportion to their relative costs or indexed amounts. A central authority is needed to calculate the total amount to be recovered, the amount of the charges (i.e., the percentage of billings IXPs must pay), to collect the revenues, to enforce payment and reporting, and to distribute the revenues. That authority should be independent of any of the interests that are involved in the payment or distribution of the funds. The present rule designates NYNEX as the access administrator. NYNEX has performed that role competently, and we have received no complaints about any of its actions. Nevertheless, NYNEX is placed in the dual role of enforcing and collecting access payments from entities that are both its wholesale customers and its retail competitors.

The proposed rule does not describe the process by which the Commission will select an access administrator, but we anticipate that some form of Request for Proposals will be issued.

Subsection F outlines the duties of the access administrator in general terms and needs no explanation here.

7. Subsection G: Administration, Collection and Distribution of Subsections C and D Recovery Amounts

Subsection G describes in detail the reporting, calculational and payment obligations of IXPs and the

access administrator in relation to the charges for embedded cost recovery required by subsection C and D.

a. Calculation of the Charge

The formula for the charge that each IXP must pay is stated in subsection G(3). The formula produces a percentage. Each IXP (including all LECs and all switchless interexchange resellers) must pay that percentage of its retail billings to the access administrator. The percentage is obtained by dividing the combined revenue requirement calculated under subsections C and D, as adjusted annually, by the total retail billings of all IXPs. As discussed above, IXPs other than ILECs are essentially free to establish whatever interexchange rates, and use whatever interexchange rate structure they desire, although it is reasonable to expect that their rates will be influenced by the rates of the ILECs which are actively regulated. The numerator of the formula (the total embedded revenue requirement subject to recovery) will presumably decline over time because of the decline in the subsection charge. If rates (and retail billings) are related to access for IXPs, the denominator (total retail billings) will also decline. It is possible, therefore, that the percentage of retail billings that IXPs pay may remain relatively constant. Nevertheless, under the circumstances described, in absolute terms, both access charges and retail rates would be declining.

b. Reporting

The system we have proposed necessarily requires each IXC to report its retail interexchange billings to the access administrator. The present rule has the advantage that at least a significant portion of IXP traffic can be measured on a per-customer basis, thus making minutes of use easily verifiable. It does not allow such measurement, however, where a carrier uses access other than feature group D access. We believe that the retail billings are reasonably verifiable, using audits if necessary, and that the advantages of a system

that does not use minutes of use as the basis for assessing access charges far outweigh the disadvantages.

c. Payment of Access by Switchless Resellers; Minimum Access Charge

As discussed above, we propose in this rule to require every interexchange provider, including switchless interexchange resellers, to pay a percentage of their *retail* billings. Thus, wholesale billings (sales by an underlying interexchange carrier to a switchless interexchange reseller or even by a switchless interexchange reseller to another switchless interexchange reseller) are exempt. Under present practice, underlying providers, at least in theory, pay a common line charge on all of their intrastate interexchange minutes, including minutes sold to switchless resellers, and switchless resellers have been granted exemption from the payment of access charges. (This practice is not stated in the rule, which can be read literally to require payment of the common line charge by "all" competitive providers.) In theory, either method in theory produces the correct result. Under both methods, the proper level of access is paid only once (not zero or twice) on every unit (whether a minute or a dollar) of service actually used by end-user customers.

Unfortunately, we have reason to believe that the present system is not working properly. Despite reasonably clear instructions contained in form letters issued by this Commission, some interexchange providers claiming to be switchless have not properly understood definitions and have mistakenly claimed switchless status. Many maintain a switch out of state (indeed, few, if any, non-ILEC interexchange providers maintain a switch within the state) that is used to switch Maine traffic. Some IXPs claiming switchless status apparently do not realize that even a computer that receives billing information (e.g., the originating and terminating numbers) constitutes

switching.[8] We are also aware of situations in which an entity correctly identified itself as a switchless reseller at the time the exemption was granted, but later started using its own switching facilities without providing notice to the Commission or the access administrator.

In addition, many switchless resellers, who simply purchase services from the retail tariff of an underlying carrier, do not properly understand the structure and level of Maine access charges, particularly the common line charge. We are aware of several instances where switchless resellers have priced their retail services below the level of the access charges that are inherent in rates they pay to underlying carriers. If, as proposed, all interexchange providers must report their intrastate interexchange billings and must pay a certain percentage of those billings to the access administrator, there should be greater understanding of the nature of access costs, so that switchless interexchange providers may price their retail services appropriately.

We also recognize that the proposed system is not without difficulties. Because switchless interexchange resellers will be paying the subsections C and D charges themselves, they will have to purchase from a wholesale tariff offered by an underlying carrier that offers one. For a wholesale tariff to be attractive, it must be discounted by at

[8]The switchless reseller may believe that all it is doing is collecting billing information. However, in this circumstance, it is probable that the call is transported to the switchless reseller's out-of-state computer by an underlying carrier; that it is then retransmitted by the same, or possibly even another, underlying carrier to another Maine location; that the transaction is being reported by the underlying carrier(s) and billed to the IXP as two interstate calls; and that no intrastate access is paid at all. The computer in this instances is performing a switching function and the "switchless" reseller is not switchless.

least the amount of the access charges (subsections C and D charges) that the underlying carrier avoids by selling at wholesale.

Plainly, any such wholesale tariff should be available only to legitimate resellers and not to persons or entities that would simply use the services themselves and thereby avoid the payment of access because they did not bill it to others. Because the subsections C and D charges are based on a percentage of its retail billings, a fraudulent "reseller" could avoid payment of some or all of the access charge that would otherwise be paid by the underlying carrier (if there were no exemption for wholesale sales) by underbilling, i.e., at any level less than the cost to itself at the wholesale rate.

Proposed subsection G contains three provisions designed to prevent this kind of fraud. First, paragraph 2 states no underlying provider may report revenues as wholesale revenues unless they are sold under a rate schedule that prohibits a purchaser from using the service for any purpose other than resale. Second, paragraph 2 further states that sales under a wholesale tariff are limited to switchless interexchange resellers that have registered with the access administrator.[9] Third, paragraph 4 requires a minimum access charge for any wholesale services that have been resold to switchless interexchange providers. That minimum charge is based on the wholesale rate charged to the switchless interexchange reseller. To calculate the minimum payment that must be paid by the ultimate retailer, the wholesale rate is "grossed up" to the level that would be charged by the underlying carrier if there

[9]Because there may be circumstances where legitimate switchless resellers are not public utilities (e.g., because they do not hold themselves out to the general public), we have not stated as a requirement that the reseller be authorized to provide service by the Public Utilities Commission. Obtaining such authority is, of course, an independent requirement for any switchless interexchange reseller that is a public utility.

were no wholesale discount and if the underlying carrier had to pay access on the sale.[10] The grossed-up amount is then multiplied by the percentage rate of retail sales that all IXPs must pay.

The minimum charge is intended only as a deterrent to resellers that would be tempted to self-deal by selling to themselves at less than the amount they actually paid for the service at wholesale, thereby saving themselves the access charges. The minimum charge applies only if a reseller sells below its wholesale costs. Otherwise, as provided in paragraph 4, the reseller must pay the established percentage of its retail sales in the normal manner.

We provide an example here of how the minimum access charge would work. Assume that an underlying provider has a retail rate of 30¢ per minute. Assume that the percentage that all IXPs must pay on the retail sales to the access administrator for the subsections C and D charges is 60%. Assume further that the underlying carrier has offered a wholesale rate of 10¢. For its own retail sales, the underlying carrier must pay an access rate of 18¢ (30¢ x .6). Note that the underlying provider's wholesale rate is discounted by more than the amount of the access charge; 30¢ - 18¢ = 12¢, but the underlying provider has offered a wholesale rate of 10¢.

We will now assume two separate retail sales by the switchless reseller. First, we will assume that the reseller has offered a retail rate of twenty-eight cents, two cents less than retail rate of the underlying carrier. On that sale, the reseller would pay an access charge of 16.8¢ (28¢ x .6).

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[10]The "grossing up" is described in paragraph 4 as dividing the amount billing to the switchless interexchange provider by one minus the percentage (converted to a decimal) of retail sales that all carriers must pay.

Assume, however, that the reseller is self-dealing, i.e., using the wholesale service for itself as an end-user. If the "reseller" billed itself nothing, it would owe no access (60% of zero is zero), absent the minimum charge. If it sold to itself at five cents a minute, so that it would be technically a "reseller," it would owe 3¢, absent the minimum charge. Note that 3 cents is substantially lower than the 16.8 cents and the 18 cents paid by the legitimate underlying carrier and reseller. Note also that the 5¢ retail rate is substantially below the wholesale rate charged to the "reseller." Thus, the "reseller" is "selling" below its own costs.

Under the proposal, the reseller must pay the minimum access charge on all wholesale services sold to it. The minimum charged calculation is based on the wholesale rate. In the example, the wholesale rate is 10¢. That rate is divided by 1 minus the percentage access rate (.6), i.e., -4 (1 - .6 = .4). Ten cents divided by .4 equals 25¢. That amount is then multiplied by the access percentage to produce a minimum charge of 15¢ (25¢ x .6). Twenty-five cents represents the break even point for the switchless reseller, i.e., the point at which it will still cover the minimum access payment due on the fail to it without any profit. The reseller is, of course, "free" to sell at a rate less than 25¢, but under those circumstances it will lose money: it will have to pay 10¢ to the underlying carrier and 15¢ to the access administrator. Section 10(B), discussed below, requires IXPs that offer wholesale rates to state the minimum access charge and the break-even rate in their rate schedules.

d. Distribution

Paragraph 5 of subsection G requires that all the revenues received by the access administrator pursuant to the subsections C and D charges shall be distributed among ILECs in direct proportion to the amounts subject to recovery that each ILEC has calculated pursuant to those subsections. This methodology does not produce a guaranteed recovery of each dollar subject to recovery, in the manner, for

example, of electric utility fuel clauses. Rather, it produces revenue in a manner similar to traditional rate-of-return regulation in that a rate is established based upon cost, but actual revenue is dependent both on the rate and the number of unit sales. However, to a great extent, the methodology is self-correcting. Thus, if all IXPs (including ILECs themselves) collectively lower their interexchange rates in one quarter (presumably through market pressures rather than by collusion), the revenues available for distribution will go down for that quarter. However, total billings by IXPs will also decrease, thus reducing the denominator of the formula that produces the percentage access rate. Accordingly, the percentage rate for the subsequent quarter will increase. Similarly, if the overall level of revenues and billings increases, the opposite affect will occur.

8. Subsection H: Unauthorized Service; Failure to Report and Under-Reporting; Rates; Notice

Subsection H contains rates and other sanctions to be administered by the access administrator that are designed to deter unauthorized operation, failure to provide required reports and under-reporting. The rate for unauthorized operation (paragraph 1) is similar to a provision in the current rule at section 5(B). The rate is sometimes referred to a "block-or-pay" rate because it applies only if the unauthorized provider itself or the LEC cannot block or does not block the unauthorized traffic. The rate is more accurately described as "pay if blocking cannot be accomplished." The rate is set at a level that is designed to deter unauthorized service. Because proposed section 8 addresses access charges comprehensively, we propose to relocate the rate for unauthorized service to section 8; the provisions requiring blocking are located in proposed section 7.

Paragraphs 2, 3 and 4 of subsection H describe the rates and sanctions for reporting violations. They need no further explanation here. The paragraph 2 provision applies only in the special circumstance that an interexchange

provider does not use feature group D access, as described in subsection D(5) above.

9. Deletions From Existing Section 8

We propose to eliminate several substantive subject areas presently contained in section 8.

We propose to eliminate the entire subject matters of present subsections C(4) (the billing and collection element of access charges), D (Special Access), E (Private Line Access) and F (Leakage Access). Present subsection C(4) requires an incremental-cost-based access charge element for billing and collection. That function is now reasonably competitive and we see no need to regulate its pricing by rule.

The provisions for access charges for special access and private line access (subsections D and E) will be unnecessary if we adopt the proposal to base access payments on each IXP's market share based on a measure other than minutes of use. Under such a system, the type of facility used by an IXP is unimportant.

We propose to eliminate the leakage access charge consistent with the views we stated in our last Chapter 280 rulemaking, in Docket No. 91-102, Order at 7-11 (November 13, 1991). It has never been enforced (the Commission suspended the provision indefinitely in the Docket No. 91-102 Order); it would be difficult to enforce; and the leakage problem (customers avoiding toll charges by effectively making all calls local through the use of private lines) has been significantly diminished by lower retail toll rates for large customers. In addition, the leakage problem (like the use of private lines for toll calling generally) to some extent should be alleviated by the market share access mechanism.

C. Future Charges for the Provision of Interexchange Access by CLECs

At this time we do not propose any charges or rates in section 8 that will be paid by interexchange providers to competitive local exchange carriers (CLECs). At this point there are no CLECs, and, although we expect CLECs to operate reasonably soon, there is simply too much uncertainty to allow us to proceed with a concrete proposal at this time. Accordingly, a further rulemaking will be necessary, as may also be the case for local interconnection charges. We have, however, reached certain tentative conclusions about access charges for CLECs. First, we believe that they probably should be able to charge IXPs for transport and switching services at rates based on long run incremental costs, either identical to or similar to the rates proposed in section 8(B) for ILECs. We also have tentatively concluded that ILECs should be able to recover their embedded loop costs pursuant to charges that are similar or identical to those contained in proposed section 8(D), but that they should not be able to recover any embedded transport and switching costs that exceed their incremental costs, as is permitted on a transitional basis for ILECs pursuant to subsection C. That transitional charge for ILECs has its basis in the fact that ILECs have made prior investments in transport and switching facilities. We intend that in the future that all IXPs, including ILECs shall subject any investment that exceeds their incremental costs for transport and switching to the competitive retail market.

§ 9. A. Present Section 9: Charges for Open Service/Network Architecture

We propose to delete present section 9. While we have proposed to retain section 7 (renumbered as section 5) that describes the process by which customers and telecommunication providers may request particular services, network functions and elements, and access to the network, we do not believe that it is any longer necessary to describe the rate for services that might arise out of that process. Pricing should instead be left for the normal tariff and special contract processes.

B. Future Section 9: Reserved: Local Interconnection Charges

This section is "**RESERVED**." We do not at this time propose any charges or rates for local interconnection. To do so at this time would be premature. We may have to address many of the issues that would be involved in this section in an arbitration request that has been filed by AT&T, Docket No. 96-510, filed on August 9, 1996, or in the interconnection agreement filed by NYNEX and Freedom Ring, filed on September 5, 1996, Docket No. 96-521. We must also determine the extent to which the FCC, in its Interconnection Order issued on August 8, 1996, mandates particular policies or methodologies that states must follow in the deciding arbitration issues under the section 252 of the Telecommunications Act (47 U.S.C. 252), and the extent to which any FCC preemption of state authority is lawful.

We do intend to provide as much consistency as possible between the charges that we ultimately adopt for local interconnection (whether in this rule or otherwise), the rates and charges for interexchange access in section 8, and (whether or not they are binding on the states) the policies contained in the FCC's Interconnection Order, which require transport and termination (among other rates) charges to be based on forward-looking economic costs, including "total service long run incremental cost" (TELRIC) of network elements, transport and termination.[11] Clearly, a uniformity of methodologies has the

[11]The pricing rules (including the definition of "forward-looking costs") adopted by the FCC's Interconnection Order have been stayed by the U.S. Court of Appeals for the Eighth Circuit. *Iowa Utilities Board v. F.C.C.*, Nos. 96-3321 and 96-3406, ____ F.2d ____ (October 15, 1996). The Court ruled that those Appellants argued that 47 U.S.C. §§ 152(b) and 252 grant exclusive jurisdiction over pricing of local interconnection to the states, and the Court ruled that the appellants have a reasonable likelihood of prevailing on that issue. 47 U.S.C. § 252(d) specifically requires state commissions to establish

benefits of simplicity and the avoidance of arbitrage possibilities. In particular, it is our present view that the forward-looking economic costs for local interconnection will be calculated using the same methodology as those for interexchange transport and switching, taking into account that such factors as time of day and distance may produce different actual rates.[12]

§ 10. Schedule Filings by Interexchange Providers; Changes in Rates

Proposed section 10 addresses the same subject matter as existing section 10. Subsections A and C of proposed section 10 are essentially identical to existing subsections A and B.

Subsections B, D and E are new. Proposed subsection B states that IXPs that offer wholesale rates must provide limitations in their terms and conditions that are designed to ensure that wholesale rates (which do not include access) are used exclusively for resale purposes and not for the

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interconnection rates for competitive local exchange carriers, and mandates only that the rates for transport and termination shall be based on the "additional costs of terminating . . . calls." Nevertheless, as noted above, we have independently determined that the FCC definition of forward-looking costs and TELRIC appear to be reasonable.

[12]We have held that view at least since the issuance of our Preliminary Proposal in January of 1995. Based on the comments presented and discussions we have had during the course of our Inquiry into access rates for both interexchange and local competition in Docket No. 94-114, we have not been convinced that we should depart from this view. We continue to believe that the incremental cost of a mile of transport or a second of switching, at the same time of day and over the same facility, is identical for both interexchange and local traffic. In so saying, we of course do not address the issue of recovery of interexchange or local embedded costs that are in excess of incremental costs.

use of the purchaser, who might thereby escape the charges required by sections 8(C) and (D).

Wholesale rates are likely to be substantially discounted from an IXP's retail rates. As discussed above, we propose a minimum access charge to ensure that resellers pay at least the level of access that otherwise would be paid by the underlying carrier if the underlying carrier had to pay access on all (not just retail) revenues. We are concerned that switchless resellers purchasing a substantially discounted wholesale rate may be misled into believing that they may charge only slightly more than that rate and pay only a percentage of their actual retail revenues, rather than the minimum charge, which will be much higher. Accordingly, we propose that IXPs state in their rate schedules both the minimum access charge that will be due (calculated based on the wholesale rate), and the break-even rate that resellers must charge at retail in order to cover the wholesale rate and the minimum access charge.

Proposed subsection E states a general finding concerning the nature of competitive interexchange telecommunications services and concludes that a lesser degree of price regulation is necessary for IXPs other than ILECs. This statement is similar to statements that we have been including in virtually every certificate of public convenience and necessity that we have issued for interexchange providers.

Proposed subsection D states that interexchange providers other than ILECs shall be exempt from various filing requirements that apply to ILECs when ILECs file proposed rate changes that are defined by 35-A M.R.S.A. § 307 as a "general rate case" (an overall increase in rates of more than 1%). A similar provision is contained in Chapter 110 (Practice and Procedure) § 711.

§ 11. Notice By All Interexchange Providers Prior to Effective Date of Rate Increases

There is no present equivalent to proposed section 11. (We propose to move present section 11 to section 15.) As indicated in the discussion of proposed section 10(D) above, we do not expect that interexchange providers other than ILECs will provide the Commission with advance notice of the filing of a general rate case, or that they must provide notice to customers of the filing of a rate case, or that they must file prefiled testimony and exhibits. Notice to customers in that context would be relatively meaningless if the Commission generally does not suspend and investigate the proposed rates. Nevertheless, based on recent experience with at least one carrier, we believe that it is important that customers receive notice of actual rate increases sufficiently in advance of the effective date to allow the customers to consider alternatives. Presently, ILECs and other utilities that proceed through an entire litigated rate case are required by Chapter 110, § 718 to provide customers with direct notice of the rates that are finally approved by the Commission. Consumption of many utility services, including interexchange toll services, is different from that of most other goods and services, in that the consumer is likely to use the service before receiving a bill, and is therefore not likely to know of any price change at the time of consumption. Proposed section 11 therefore requires at least 15 days notice prior to the effective date of any increase of a particular rate of 20% or more.

§ 12. Reports and Records

This proposed revision of Section 12 addresses the same subject matter as present Section 12 but makes one major modification. Present subsection A in effect requires all telecommunications providers to file a detailed annual financial report with the Commission. Nevertheless, we have waived that requirement in all of our orders that have granted operating authority to individual competitive interexchange providers. We propose to codify that practice in the rule. Thus, all IXPs

other than ILECs will be exempt from the annual report and other accounting requirements of Chapter 210 (Uniform System of Accounts for Telephone Utilities), but must continue to report annual revenues and revenues derived from sales of resale so that the Commission may properly bill its annual assessment to each utility.

Proposed subsection B is essentially the same as present subsection B, but is somewhat more specific about the records that an interexchange provider must retain.

§ 13. Waiver of 35-A M.R.S.A. §§ 707 and 708; Notice Requirement

This proposed section is new. (Present section 13 is proposed to be moved to section 14.) In our orders granting approval for interexchange service, we have exempted all competitive interexchange providers from the requirements of sections 707 and 708 reorganizations of utilities and contracts with affiliated interests. We propose to codify those exemptions in this Rule. Nevertheless, under the proposal, interexchange providers must provide notice of those reorganizations that actually affect the structure of the public utility itself or of its immediate owners. Mergers and changes in ownership appear to occur very frequently in the telecommunications industry, and we have had some difficulty in determining the identity of current interexchange providers. Proposed subsection C requires utilities receiving the exemption to provide notice of any name change or change of the person(s) whom the Commission should contact to discuss proposed tariff changes and other regulatory matters.

§ 14. Applicability of Other Statutes

This section restates the contents of present section 13, which states that all telephone utilities must comply with the statutory provision requiring approval prior to discontinuing service). The proposed section states other

statutory requirements with which all utilities must comply, and that the Commission has no authority to waive.

§ 15. Commission Review

This section states, with minimal substantive change the provisions of present section 11.

§ 16. Waiver of Provisions of Rule

Proposed Section 16 is identical to section 14 of the current rule.

IV. ALTERNATIVE INTERIM ACCESS CHARGE PROPOSAL

As noted in the Introduction (Part I), we also set forth an interim alternative plan to reduce access charges. The FCC will soon commence a rulemaking that may substantially change the federal interstate access charge plan (Part 69). It is our desire to adopt an intrastate access charge plan for Maine that is consistent with and works well with any FCC plan. The structure of the first proposal, particularly the forward-looking rates for transport and switching, is consistent with the policies for *local interconnection* set forth in the Telecommunications Act of 1996 and the FCC's Interconnection Order.

The FCC's Interconnection Order drew heavily from the rules of the several states that had adopted local interconnection rules prior to the FCC. We expect that we will advocate a plan for interstate interexchange access that is similar to our first proposal and hope that the FCC will carefully review it along with other state access reform proposals when it crafts its own rule. In light of the present uncertainty about what plan the FCC will adopt for interexchange access, however, it may be desirable for us to make interim, relatively simple modifications to current Chapter 280 prior to adopting a fully modified Chapter 280.

We continue to receive complaints, particularly from small business customers, about the relatively high intrastate toll rates available to those customers. Those customers often do not have enough calling volume to justify the relatively high buy-in rates that are part of most optional calling plans. Several interexchange carriers have claimed that their inability to offer lower rates to these small business customers is due to our current access charge structure.

Therefore, we seek comment on the following interim proposal. We also seek comments from interexchange carriers as to whether the interim proposal will enable them to offer lower rates to small business customers and whether those carriers will commit to pass any access reductions on to their customers. We seek comment as to what we can do to avoid implementing an access reduction that does not result in lower toll rates.

The alternative interim plan would retain the current Chapter 280 structure but would immediately reduce the per-minute *originating* common line charge by 20%. The level of this reduction would be consistent with the view that in a competitive environment new entrants or their customers would not be expected to pay for all the embedded traffic sensitive costs or lost revenues of the incumbent. The current common line charge is divided into two parts: a fixed terminating charge of 9.8 cents (daytime) and an originating charge ranging from about 21.4 cents (for low-volume daytime traffic) to close to 0 cents (reflecting discounts for very high volume traffic). (Evening (35%) and Night/Weekend (60%) discounts apply to the same time periods as they do to retail toll rates.) Thus, a 20% reduction of the originating charge would result in a somewhat smaller reduction to the overall common line charge (originating plus terminating).

As noted above, the alternative interim proposal would place the reduction entirely on the originating common line charge and not on the terminating charge. Presently, some large customers (directly or through their carriers) avoid the originating charge in its entirety by using special access or private lines for originating access. Placing the reduction on only the

originating charge would mean that customers using special access would see no reduction. We seek comment on this aspect of the interim alternative proposals.

For the interim alternative proposal, we request comment about any effect it may have on the alternative form of regulation (AFOR) we have adopted for NYNEX, effects under the existing AFOR rules, its relation to AFOR pricing rules for retail interexchange rates, and whether any new pricing rules may be necessary.

The alternative interim proposal has as the primary advantage the fact that they are easy to implement because they constitute minimal change from the status quo. They have a disadvantage that we would not make other changes to the access charge structure included in the first proposal that are not directly related to the overall price level but that we believe to be significant advantages.

Finally, we request comment on two other issues. First, if we adopt the interim alternative, should we also adopt a provision that requires revenue reconciliation between the interim plan and whatever plan we finally adopt; and, if so, the nature of that reconciliation. Second, if we adopt an interim access charge plan, should we also adopt the various proposed changes to sections 1-7 and 9-16 of the first proposal, plus the repeal of those provisions of section 8 that are no longer used, given that those proposed changes are almost entirely unrelated to changes in access charge structure or access charge levels.

V. COMMENTS

Comments shall be filed by Thursday, January 9, 1997. We have chosen this date in part based on an expectation that the FCC will be issuing a Notice of Proposed Rulemaking for interstate interexchange access (Part 69) in late November or early December. For the reasons discussed above, that Notice may have an impact on the proposals contained in this rulemaking.

Accordingly, if the FCC's Notice is delayed, we may find it appropriate to change the date of the comment period.

Dated at Augusta, Maine, this 24th day of October, 1996.

BY ORDER OF THE COMMISSION

Christopher P. Simpson
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent

COMMISSIONER CONCURRING IN
PART AND DISSENTING IN PART: Hunt

SEPARATE STATEMENT OF CHAIRMAN WELCH

I have voted to adopt this Order with some reluctance. I am not fully confident that the direction we signal today, or perhaps more precisely the uncertainty about the direction we should go that we display today, is appropriate. High toll and access rates have been a burden to Maine ever since I came to the Commission. While the reasons for this condition are many and complex, it would certainly be fair to characterize our collective efforts to address the problems created by the level of these rates -- ranging from distortions to local calling areas to impediments to the expansion of small Maine businesses that we so sorely need -- as falling short. We have taken some steps in the right direction, in particular our grant of freedom to NYNEX to lower rates with minimal Commission involvement, but I believe that we are at a point -- indeed, we may have passed the point -- where a greater degree or imagination and focus should be brought to bear.

It had been my hope that, by developing an economically sound access rate structure, we would be able to move Maine significantly nearer the mainstream of toll and access pricing. I now perceive, however, that the best economically rational access pricing structure we can develop -- which I think has been ably crafted by our staff and presented as the first option in the order before us -- will not achieve the kinds of price reductions that are likely to make a significant difference to Maine’s consumers and its economy.

Moreover, as often happens when regulators take the time to ponder their choices, the world has moved on: In particular, the FCC has announced, in the wake of the new federal telecommunications legislation, that it will soon undertake a comprehensive review of the federal access charge structure, as well as a review of the closely related subject of jurisdictional separations. We are, it seems, launching what may be the regulatory equivalent of a magnificent wooden sailing ship just as steam and iron begin to rule the waves. Maine has from time to time suffered from thinking that it needs to have regulatory

rules that are different and better than the rest of the country. Sadly, the result has sometimes been that we have been different to our economic detriment. Put another way, I would not support adopting a rule that put us at variance, to any noticeable degree whatever, from the rules ultimately promulgated by our federal counterparts; it just does not make sense to set up conflicting structures for customers who, ultimately, care very little whether a call is designated as interstate or intrastate for jurisdictional purposes.

Nevertheless, I believe we should seek comment on these proposals.

First, I believe that the federal authorities and our peers in other states should have the benefit of what I believe is a sound approach to pricing access, and by our releasing this proposed rule for comment, the particular solutions we have developed may contribute in a positive way to the national debate. The FCC is looking at access charges not just for its own amusement: they are looking because they, and virtually everyone else in the industry, have long recognized that there are some very inefficient signals sent by the current structure, and it is time to try to do at least a little better.

Second, it is possible though perhaps not likely that the entire federal effort will become unraveled, or delayed for many years, by the enormous complexity of the litigation that has already begun relating to the implementation of TRA 96. In this regard I note that the 8th Circuit Court of Appeals has already issues a stay of the FCC's interconnection order. We should, at least, have the ability to move to a better structure relatively soon if the federal process becomes hopelessly mired.

Third, I would not offer the proposed rule here if we were not also offering a second altogether different proposal as an alternative for comment. I refer to the a proposal to cut access charges, within the existing structure, by at least 20% by the end of 1997.

I have no doubt that we will be given a host of reasons why this second proposal should be rejected as we have described it. Nevertheless, I am persuaded that we must, in the near term, find a way to release the drag on our economy that the current access and toll rates create; if there are better proposals that people with more creativity than I can develop, our release of this Notice is an express invitation to bring them forward.

SEPARATE STATEMENT OF COMMISSIONER HEATHER HUNT,
CONCURRING IN PART AND DISSENTING IN PART

I concur that Maine's access charges need reform. Our toll rates, and consequently access charges, are too high.

Intrastate toll rates influence the business climate; they should enhance, not hinder, economic development. Maine's toll rates burden our economy with a competitive disadvantage vis a vis states where toll rates are significantly more affordable. For example, if the cost of telecommunications is the measuring stick, it makes economic sense for a Maine company in frequent contact with a supplier to do business with an out of state entity rather than another Maine company.

I agree with the request for comment on the alternative proposal for an interim, immediate reduction in access charges based on the current scheme. And, like my colleagues, I welcome parties to suggest other means of providing rate relief.

I write separately because I disagree that the first and far more extensive proposal the majority advances is the right approach for Maine now. It is said the proposal is theoretically sound. But there remains a lingering question: does it deliver the right result? When I think about this proposal in light of the circumstances, I am reminded of the phrase "there is nothing more horrible than the murder of a beautiful theory by a brutal gang of facts."

Since at least late 1994, the Commission has considered adjusting the access rate structure with an eye on alleviating the burden of high toll rates. Yet the Commission has not acted. Only now, in the wake of the Telecommunications Act of 1996 and the FCC's announcement of its intent to issue an interstate access rule by June, 1997, does the Commission propose a comprehensive overhaul. If adopted, the proposal would take effect this spring. It would likely need to be revisited after federal action later this year. In my view, it is at this time

more an academic exercise than a lasting achievement for Maine's economy.

Some believe that to rely on the FCC to execute promptly the Telecommunications Act is quixotic. That claim is not supported by the facts to date. The FCC met its mandate to complete interconnection and unbundling. Moreover, the judiciary has acted swiftly to resolve the issues brought before it. It is reasonable to believe those entities will address the Act's other components without undue delay.

Staff projects the proposal might reduce access charges by approximately 2% to 4% annually upon the effective date. Such a modest reduction would not make a significant difference to Maine's telecommunications consumers nor improve our business climate.

I confess further discomfort with the scheme because I do not know of any other jurisdiction that has adopted something similar. I would prefer to have less faith in the proposal's theory and be more consistent with other states than to have thorough confidence in theory and stand alone in practice. As telecommunications prices and product availability become a function of the market, distinctive rules may impede the development of competition. The Maine market may not be sufficiently lucrative to withstand unique rules of entry or operation.

Finally, I respect the majority's desire to craft a scheme that may contribute to the federal access debate. Indeed, we are fortunate to have a voice at that level through the effort and considerable skill of Chairman Welch and Joel Shifman. But I believe that doing what is right for Maine and its economy must be paramount; any other consideration must be secondary. Because this proposal does not achieve access charge reductions that will better Maine's economy and telecommunications consumers, I find the assertion that it stirs debate elsewhere, even if proven true, to be singularly unpersuasive.